

## § 350.5

Guam, or the Commonwealth of the Northern Marianas.

[57 FR 40956, Sept. 8, 1992, as amended at 60 FR 38743, July 28, 1995]

### **§350.5 Policy.**

The Federal Highway Administration (FHWA) policy is to encourage each State to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. The requirements for compliance with safety standards in one State should be compatible with the requirements in another State. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance.

### **§350.7 Objective.**

The objective of the Motor Carrier Safety Assistance Program (MCSAP) is to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles by substantially increasing the level and effectiveness of enforcement activity and the likelihood that safety defects, driver deficiencies and unsafe carrier practices will be detected and corrected.

### **§350.9 Conditions for basic grant approval.**

(a) The State shall agree to adopt, and to assume responsibility for enforcing the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR parts 390 through 399, except as may be determined by the Administrator to be inapplicable to a State enforcement program) including highway related portions of the Federal Hazardous Materials Regulations (FHMR) (49 CFR parts 107, 171-173, 177, 178 and 180), or compatible State rules, regulations, standards, and orders applicable to motor carrier safety, including highway transportation of hazardous materials.

(b) The State shall submit a State Enforcement Plan (SEP) for the conduct of an effective safety program. Such plan, upon acceptance by the

## 49 CFR Ch. III (10-1-96 Edition)

FHWA, will serve as the basis for monitoring and evaluating performance of the State under the grant, and will be resubmitted, with revisions as necessary, in applications for reapproval in following years.

(c) The SEP shall designate the lead State agency responsible for administering the plan for the State.

(d) The agencies named to perform functions under the plan shall have the legal authority, resources, and qualified personnel necessary to enforce the FMCSR and FHMR or compatible State rules at the time the State implements the approved SEP.

(e) The State shall allocate adequate funds for the administration of the SEP and the enforcement of the FMCSR and FHMR or compatible State rules.

(f) State laws shall provide for right of entry and inspection adequate to carry out the SEP and provide that the State will grant maximum reciprocity for inspections conducted pursuant to the North American Uniform Driver/Vehicle Inspection standard, through the use of a nationally accepted system allowing ready identification of previously inspected commercial motor vehicles.

(g) The State shall certify that it will maintain its aggregate expenditure of funds by the State and political subdivisions thereof, exclusive of Federal funds, for commercial motor vehicle safety programs and related programs eligible for funding under this part, as required by §350.17 of this part.

(h) The State shall agree to prepare and submit all reports required in connection with the SEP or other conditions of the grant to the FHWA upon request.

(i) The lead State agency shall agree to adopt such uniform reporting requirements and use such uniform forms to record work activities performed under the SEP as may be established and required by the FHWA.

(j) The State shall require registrants of commercial motor vehicles to declare, at the time of registration, knowledge of the FMCSR and FHMR or compatible State rules, as applicable.

(k) The statutory authority of the State to regulate motor carriers shall extend to private motor carriers of

property as well as for-hire motor carriers.

(l) The State shall ensure that commercial motor vehicle size and weight enforcement, drug interdiction, and traffic enforcement activities funded under this program will not diminish the effectiveness of other commercial motor vehicle safety enforcement programs.

(m) The State shall take appropriate steps to ensure that fines imposed and collected by the State for violations will be reasonable and appropriate and, to the maximum extent practicable, will seek to implement into law and practice the recommended fine schedule published by the Commercial Vehicle Safety Alliance.

(n) The State will participate in the SAFETYNET no later than January 1, 1994.

(o) The State will undertake efforts to emphasize and improve enforcement of State and local traffic laws as they pertain to commercial motor vehicle safety.

(p) The State will ensure comprehensive enforcement and reinspection of vehicles and drivers placed out of service to verify compliance with lawful orders and the correction of all violations cited on roadside inspection reports.

**§ 350.11 Adopting and enforcing compatible laws and regulations.**

(a) No funds shall be awarded under this part to States that do not adopt and enforce laws and regulations that are compatible with the FMCSR (except as may be determined by the Administrator to be inapplicable) and the FHMR, unless otherwise provided in the Tolerance Guidelines (appendix C to this part).

(b) The State shall conduct an annual review of all its laws and regulations pertaining to commercial motor vehicle safety to determine their compatibility with the FMCSR and FHMR. The review shall be carried out in accordance with part 355 of this subchapter. To support a State's contention of compatibility, the State may submit opinions from the State's Attorney General or other chief legal officer with respect to the effect and enforceability of State laws, rules, regu-

lations, standards, or orders in relation to the FMCSR and FHMR.

(c) State laws and regulations pertaining to commercial motor vehicle safety in interstate commerce are also subject to preemption under the provisions of § 355.25 of this chapter.

(d) State laws and regulations that are not identical to the FMCSR or FHMR will be deemed compatible for purposes of this part only if they are within the variances permitted under the tolerance guidelines in appendix C of this part.

(e) No State shall implement any changes to a State law or regulation which makes that or any other law or regulation incompatible under this section.

(f) As soon as practical after the effective date of any amendment to the FMCSR or FHMR, but no longer than three years, the applicable State law or regulation must be adopted or amended in such manner as makes it compatible with the amended Federal provision.

(g) Any State may apply for a variance related to State laws, regulations or enforcement practices pertaining to commercial motor vehicle safety in intrastate commerce, which shall be granted if the State can satisfactorily demonstrate that the State law, regulation or enforcement practice achieves substantially the same purpose as the similar Federal rule, does not apply to interstate commerce, and has no adverse impact on safety.

(h) Upon a determination by the FHWA, on its own initiative or after determination initiated at the request of any person, including a State, that a State has failed to comply with the requirements of this part, or that a State law, regulation or enforcement practice pertaining to commercial motor vehicle safety in either interstate or intrastate commerce is incompatible with the FMCSR or FHMR, a proceeding under § 350.27 for withdrawal of approval of a State plan may be initiated. This proceeding shall be in addition to or in conjunction with any action initiated under § 355.25 of this chapter.

(i) Any decision regarding the compatibility of a State law or regulation